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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/419,849      | 10/19/1999  | NIKOLAI M. KRIVITSKI | 86017.000010        | 1900             |

23387 7590 08/13/2002

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EXAMINER

DICKENS, CHARLENE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2855

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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| 23387   | 7590        | 06/17/2002           |  |                  |
| Stephen B. Salai, Esq.<br>Harter, Secrest & Emery LLP<br>1600 Bausch & Lomb Place<br>Rochester, NY 14604-2711 |             |                      | <br>EXAMINER<br>DICKENS, CHARLENE |                  |
|   |             |                      | ART UNIT   | PAPER NUMBER     |
|   |             |                      | 2855   |                  |

DATE MAILED: 06/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/419,849

Applicant(s)

KRIVITSKI

Examiner

DICKENS

Group Art Unit

2855

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 4-1-02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-38 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-38 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

1. The disclosure is objected to because of the following informality on page 16, line 13, "20" should be --22--.  
Appropriate correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-38 are rejected under 35 U.S.C. 102 (b) as being anticipated by Krivitski et al. Krivitski et al. teaches an apparatus used in the method of determining an initial flow rate of a liquid, i.e., blood, in a conduit 12 having a catheter (26, 32) comprising: introducing a discrete volume change to the initial flow rate by injecting, in an injection port (40, 70), or withdrawing the discrete volume from the conduit (col. 5, lines 50-63); sensing (50, 60), within a conduit, a corresponding resulting change, which includes sensing an upstream location 14 and a downstream location 18, in the flow in the conduit using a flow, velocity, optical and pressure sensors (col. 2, lines 1016); and determining the initial flow rate in response to the introduced volume change and the sensed resulting change (col. 5, line 64 - col. 6, line 67); wherein sensing a corresponding resulting change includes sensing a dilution indicator (col. 6,

lines 18-28); controller 58 configured to determine the initial flow rate in response to the known volume change and the corresponding change; wherein introducing the volume of the indicator includes introducing a solution including at least one of saline and glucose into the conduit (col. 5, lines 56-59).

4. Applicant's arguments filed 4/1/02 have been fully considered but they are not persuasive. Applicant argues the term "volume change" has a specific meaning as set forth in the present application and thus Krivitski '989 does not teach "a volume change" as claimed. While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "volume change" in the claims is used by the claim to mean "a known volume over a known time," while the accepted meaning is "a change in capacity in a region." Thus, the Examiner believes Krivitski '989 does teach "a volume change" as claimed. In response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a known volume over a known time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*,

988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Accordingly, Krivitski '989 does teach the claimed invention and all arguments presented are not convincing.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Dickens whose telephone number is (703) 305-7047. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist or the customer service

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Art Unit: 2855

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representative whose telephone numbers are (703) 308-0956 or  
(703) 308-4800 respectively. The fax numbers are (703) 305-3431  
and (703) 305-3432.

  
cd/dickens  
June 8, 2002

  
Benjamin R. Fuller  
Supervisory Patent Examiner  
Technology Center 2800